



Cargo Preference News4U
Moving Cargo - Lifeline of the Sea



CAPT William Schubert

November 2004

FORGING AHEAD WITH MARITIME ADMINISTRATOR SCHUBERT

Recently, Capt. Schubert visited the Greater Houston Port to help celebrate its 75th Anniversary. During that event, he reported Houston's great strides in promoting the maritime industry. "The Port has become a dominant player in the container and cargo business, handling roughly two-thirds of all container traffic in the Gulf of Mexico." He further reported that Houston is "ranked Number 2 in our Nation by cargo tonnage." (To view full speech, click on

<http://www.marad.dot.gov/Headlines/speeches/2004/POH%2075th%20Anniversary.htm.>)

"CARGO PREFERENCE SUPPORTS U.S.-FLAG VESSELS WITH IMPORTS TOO!"

Recently, a U.S.-flag vessel delivered a prototype locomotive to the Port of Albany for delivery to the Federal Railroad Administration testing facility in Pueblo, CO. The locomotive, built in Spain, is the first of a fleet to be delivered to New Jersey Transit. The balance of the units will be assembled in the United States from domestic and imported parts. The locomotive weighed 131 metric tons and was scheduled to travel to Pueblo on its own wheels.



MARAD's Office of Cargo Preference works with its sister agencies, such as the Federal Transit Administration, to ensure that similar equipment imported for transit projects around the country travel aboard U.S.-flag vessels. Hundreds of passenger car shells have also been carried by U.S.-flag carriers, with many more to come in the future.

FEDERAL TRANSIT ADMINISTRATION (FTA)

FTA is one of eleven agencies within the U.S. Department of Transportation. Headed by a Presidentially appointed Administrator, the FTA functions through their Washington, DC, headquarters office as well as through ten regional offices that assist transit agencies in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation includes buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, and people movers.

The Federal government, through the FTA, provides financial assistance to develop new transit systems, improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

It is on the basis of these grants, and other forms of Federal assistance offered by the FTA, that brings many portions of the FTA projects under the jurisdiction of U.S. Maritime Administration and the Cargo Preference Laws.

While the projects themselves are generally limited to U.S. domestic programs, in many cases the project material is sourced from outside the United States and is brought in via ocean carriers. This is where the FTA and MARAD's Office of Cargo Preference jointly work to insure full compliance with Cargo Preference laws.

Some of the projects the FTA and MARAD have already worked very well together on moving involve new Washington DC Metro rail cars from Spain, light-rail cars from Brazil to New York for the New York City Transit Authority. In the next 6 months we expect to see some 200 rail cars moving from their manufacturing plant in Hungary through to Southern California where the Los Angeles County MTA will be putting them into service in Los Angeles area.

The FTA's stated core values include the statement that they "are passionate about delivering results that matter to the American people" and that they "are committed to being the best and delivering the highest value for America's investment"

In keeping with this core value statement, the FTA not only complies with Cargo Preference law, they enthusiastically support them.

Mr. Carey Brady, the Cargo Preference Trade Specialist for this program was quoted as saying "The FTA clearly recognizes the value to the American people of our Cargo Preference laws. Without these laws we would have a very hard time maintaining the U.S.-flag carrier presence in the world market."

So for this month, the MARAD Cargo Preference team offers our collective thanks to the crew at the FTA, our sister agency to which we proudly say "job well done."

Around Industry—

MARAD HIGHLIGHTS ITS CUSTOMER – MILITARY SEALIFT COMMAND

The Military Sealift Command, established in October 1949, was created to consolidate the Department of Defense's sealift assets and to ensure that the U.S. military would be able to rapidly deploy troops,

equipment and supplies by sea to any location in the world. The MSC is headquartered at the Washington Navy Yard in DC and is one of three component commands of the U.S. Transportation Command.

MSC operates vessels that provide combat logistics support to U.S. Navy ships at sea; special mission support to U.S. government agencies; prepositioning of U.S. military supplies and equipment at sea; and ocean transportation of military cargo in both peacetime and war. When MARAD activate vessels from its Ready Reserve Force, the vessels received their operational orders from MSC. (Operational orders issued by MSC to RRF vessels are generally based on the loading/discharging scheduling of cargo by SDDC.)

MARAD interacts closely with MSC in ensuring that contractors comply with the Cargo Preference laws. By authority of DFAR Subpart 247.5, Ocean Transportation by U.S.-Flag Vessels, MSC is responsible for:

- (1) Confirming the non-availability of U.S.-flag vessels to Department of Defense Contracting Officers;
- (2) Advising whether proposed freight charges by U.S.-flag carriers to the Government, contractors, or subcontractors are higher than charges for transportation of like goods for private parties; and
- (3) Filing a report to the Secretary of Navy for determination as to whether proposed freight charges are excessive or otherwise unreasonable.

MARAD has developed a cooperative business relationship with MSC to ensure that all cargo requirements are met and that commercial U.S.-flag ships are given every opportunity to compete for transportation services when MSC solicits its charter agreements.

The Cargo Preference laws require that all oceanborne military cargo must be transported on U.S.-flag ships. The joint efforts by MSC and MARAD represent one way that the Department of Defense can be in compliance with the law and still ensure its sealift requirements are met by commercial industry.

Did You Know? HIMALAYA CLAUSE UPHELD BY SUPREME COURT

The Supreme Court upheld a decision recently that zeros in on Himalaya Clause in transportation. The case involved a railroad company, as a participant in multimodal carriage of cargo from Australia via Savannah, GA to Huntsville, AL, winning entitlement to an ocean carriers' bill of lading liability limitation under the Carriage of Goods by Sea Act (COGSA).

In this case, a NVOCC (transportation intermediary) contracted with a vessel operator for actual carriage of the cargo. The bill of lading issued by the vessel operator also included a Himalaya Clause. Enroute, the train derailed and the cargo was damaged. The shipper brought suit against the railroad, among others. The railroad contended that its liability was limited under COGSA by means of the Himalaya Clauses. The trial court agreed with the railroad, but the decision was overturned by the appellate court, which held that there were no privities of contract between the shipper and the railroad as required by state law. However, the Supreme Court reversed. According to Justice O'Connor, "when an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed. The intermediary is not the cargo owner's agent in every sense, but it can negotiate reliable and enforceable liability limitations with carriers it engages."

In the News – MARAD

MARAD ENHANCES HUMANITARIAN FOOD AID WEB SITE

In a continuing effort to provide good customer service, the Maritime Administration has enhanced its Humanitarian Food Aid Program website, which now includes a 2-year breakdown of the amount of food aid distributed under each program to each foreign country. The information is categorized by program and vessel type and provides a breakdown of the actual amounts of total metric tons of U.S. vs. foreign shipments contracted to recipient countries.

To view the latest information, click on <http://www.marad.dot.gov/offices/CAPOS%20Reports/>; click on box, titled “**Choose One**”. From that location, information for 2003-2004 or 2004-2005 may be accessed. Scroll down to the vessel type, such as liner, and double click. By clicking on the vessel type, a window opens that contains applicable information on the individual country shipments. The reports must be viewed via a browser, such as Adobe Acrobat Reader, which may be obtained free of charge from its web site.

EYE ON THE STAFF – NORTH ATLANTIC REGION OFFICE

Based in downtown New York City, MARAD's North Atlantic Region Office (NAR) operates in a busy, eleven state northeast region including the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, as well as New York, New Jersey, Pennsylvania, Delaware, and Maryland. The Region is home to two strategic ports -- the Port of New York and New Jersey and the Port of Philadelphia -- as well as 10 additional ports, including the major maritime and intermodal transportation centers at the Ports of Boston, MA; Portland, ME; Providence, RI; the Long Island Sound; and Baltimore, MD.

The North Atlantic Region encompasses one of the largest concentrations of maritime and intermodal activity in the nation. For example, in 2003, more than \$100 billion worth of cargo passed through the Port of New York and New Jersey alone. During the year, more than 5,300 ships and 4 million TEUs transited the Port, the largest container port on the East Coast.

The Region Office is involved in community outreach, participating in various capacities with government and industry alike. NAR participates as members of seven North Atlantic Region Area Maritime Security Committees, works with U.S. Coast Guard Captains of the Port, emergency first responders, and other federal, state, and local agencies, and with maritime industry leaders to develop port and maritime readiness, crisis management, and recovery plans in preparation for major security breaches. The Office also works closely with the U.S. Coast Guard on the Port Security Grant Program Field Reviews. During the recent Round 4 Field Reviews NAR processed more than 200 grant applications and 5,000 pages of documentation in less than three weeks.

Engaging partners in government and industry on a daily basis provides the Region Office with an excellent opportunity to promote MARAD's program initiatives, such as Short Sea Shipping. In the Port of New Bedford, for example, the Region Office is supporting NOAA and other federal and state agencies in an interagency partnership to address the economic and beneficial use of brownfields in local port communities. Through federal, state and city support, New Bedford will leverage its available resources to revitalize its waterfront, improve waterborne transportation and develop additional commercial port facilities. This program offers a unique opportunity to develop Short Sea Shipping using existing brownfield sites as container storage and distribution centers.

The Region Office also is working with the Harbor Operations Committees and inter-agency partnerships to support capital infrastructure improvements related to maritime and intermodal transport. This includes harbor deepening projects in such ports as Boston, New Bedford, and New York and New Jersey, as well as programs such as Portway. This important surface transportation project of the Port Authority will improve access among the marine, intermodal rail, trucking, and warehousing facilities at the major marine terminal complex at Port Newark and Port Elizabeth, New Jersey. Portway is expected to significantly reduce truck traffic in the port area and on local streets.

A SHORT NOTE:

Articles for inclusion in next month's edition are now being accepted. The information should be emailed to Sharon.Jenkins@marad.dot.gov; telephone: 202/366-5064. To learn more about cargo preference and its guidelines, click on http://www.marad.dot.gov/offices/cargo_pref.html or contact us directly at 1-800-9US-FLAG or 202-366-4610.